

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

JUAN ANDRES ORTIZ JUAREZ	§	
	§	CIVIL ACTION NO. 6:06cv158
WARDEN WESTFALL, ET AL.	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Plaintiff Juan Andres Ortiz Juarez, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On April 18, 2006, the Magistrate Judge ordered Juarez to pay the filing fee in the case or to submit an application for leave to proceed *in forma pauperis* which was accompanied by a properly certified TDCJ-CID inmate trust account data sheet. Juarez received a copy of this order on or before May 4, 2006, but did not comply, nor show good cause for his failure to do so.

On August 21, 2006, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed without prejudice for failure to prosecute or to obey an order of the Court. The Magistrate Judge also recommended that the statute of limitations be suspended for a period of 60 days following the entry of final judgment, to protect Juarez from a dismissal without prejudice being converted into a dismissal with prejudice through the operation of the statute of limitations.

A copy of this Report was sent to Juarez at his last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error,

from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings and documents in this case, as well as the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Reports of the Magistrate Judge are correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice for failure to prosecute. It is further

ORDERED that the statute of limitations on the claims raised in this lawsuit is hereby SUSPENDED from the date of filing of this lawsuit until 60 days after the entry of final judgment. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

**SIGNED this 16th day of October, 2006.**

  
MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE